

Remarks

In the present Office Action, claims 1-45 were rejected under 35 U.S.C. § 103(a) as being unpatentable over U.S. Patent No. 5,444,693, issued to Arslan et al. (“*Arslan*”) in view of U.S. Patent No. 6,167,025, issued to Hsing et al. (“*Hsing*”). While not conceding that the Examiner’s cited reference qualifies as prior art, but instead to expedite prosecution, Applicant has elected to traverse the Examiner’s rejections as follows. The following arguments are made without prejudice to Applicant’s right to establish, for example in a continuing application, that one or more of the Examiner’s cited references do not qualify as prior art with respect to an invention embodiment currently or subsequently claimed.

Combination of references under 35 U.S.C. § 103(a)

Applicant offers that the references cited in the rejection claims 1-45 were improperly used in combination under § 103(a). *Arslan* relates to distributed control systems for restoring disrupted communication functionality in a network of digital cross-connect systems. *Arslan* at col. 1, lines 12-16. *Hsing* relates to communication networks and to methods and apparatus for restoring connections in networks such as those supporting asynchronous transfer mode (ATM). *Hsing* at col. 1, lines 13-17.

As explained in the Manual of Patent Examination and Procedure (MPEP), references may be combined in a rejection under § 103(a) “where there is some teaching, suggestion, or motivation to do so found either explicitly or implicitly in the references themselves or in the knowledge generally available to one of ordinary skill in the art.” MPEP § 2143.01, discussing *In re Kotzab*, 217 F.3d 1365, (Fed. Cir. 2000). However, “[t]he mere fact that references can be combined or modified does not render the resultant combination obvious unless the prior art also suggests the desirability of the combination.” *Id.*, discussing *In re Mills*, 916 F.2d 680 (Fed. Cir. 1990).

In the pending rejections, the Examiner has suggested that the motivation for combining the references “would have been to save time so when [] there is a link failure and the alternative route is pre-planned it would save time because packets or data [may] directly be forwarded to the pre-planned alternative route.” Office Action of March 2, 2005, at p. 5,

lines 3-5. Applicant submits, however, that this proposed goal may be seen only as a *post-hoc* advantage of the combination of the cited art.

A rejection under § 103(a) is improper if is based on a determination of obviousness that, as in this case, may be seen only in hindsight with the benefit of the Applicant's description of the invention. The cited art does not suggest a desirability of saving time using pre-planned alternate routes, as would be required by the MPEP and *In re Mills* (cited above) in support of the Examiner's proffered motivation. Rather, the cited combination may be brought to light only with a hindsight review of existing literature, once a reader has understood the disclosure of the present application. Thus, the pending rejection under § 103(a) is improper. Further, Applicant sees no other suggestion in the cited references for the desirability of the combining the cited references. Since the Examiner has not presented any motivation for the combination based on teachings that are present in the cited art, the Examiner has failed to make a *prima facie* case for obviousness. Accordingly, Applicant respectfully requests that the rejections under § 103(a) be withdrawn as relying on an improper combination of references.

Comparison of the claimed invention with the cited art under 35 U.S.C. § 103(a)

Even if the Examiner's combination of references were proper, the cited art would not render the pending claims unpatentable, because the cited art fails to disclose, teach, or suggest the claimed invention. For example, assuming *arguendo* that the distributed control systems of *Arslan* were combined with the communication networks of *Hsing*, the resulting combination would still not provide the Applicant's invention as claimed.

With regard to Applicant's claim 1, the Examiner has called attention to various "network levels" in *Arslan*. With reference to the *Arslan* network levels, the Examiner has proposed that this reference presents a method for restoring a path in a communication system between zones, comprising:

Establishing an inter-zone link with a first border node of a source zone (column 3 lines 21-22) with a second border node of an adjacent destination zone (column 3 lines 20-23); Interzone link in this case is referred to as links 113-3 through 113-6, which connect DACS II (first border node) of the source zone, which comprises of (DACS II 110-1 to 110-3) to DACS IV (second border node) of an adjacent destination zone, which comprises of (DACS IV 2000 109-1 to 109-6).

Applicant respectfully disagrees and submits that the “network levels” of *Arslan* do not teach or suggest “zones,” such as a source zone or an adjacent destination zone, as recited in Applicant’s claim.

According to the teaching of *Arslan*, a network level “includes digital cross-connect systems (DCSs) 107, 109, and 110 that switch communication signals at a particular trunk level in the transmission hierarchy, e.g. DS0, DS1 or DS3.” (*Arslan*, col 2, lines 34-39). Consequently, the network levels of *Arslan* are defined strictly and hierarchically by the transmission level at which they operate.

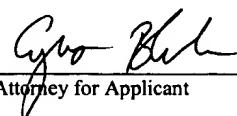
By contrast, a zone as recited in Applicant’s claim 1 is described in Applicant’s specification as executing “a separate copy of the topology distribution algorithm” and that nodes within a zone are typically “only required to maintain information about their own zone. There is no need for a zone’s topology to be known outside that zone’s boundaries, and nodes within a zone need not be aware of the network’s topology external to their respective zones.” Applicant’s specification, p. 4, lines 14-18. Applicant can find nothing within the Examiner’s cited portions of *Arslan* to teach, show, or suggest the execution of a separate copy of a topology distribution algorithm within each network level or that topological or other information is divided or distributed among network levels. Accordingly, Applicant respectfully submits that *Arslan* fails to teach “establishing an inter-zone link” as recited in claim 1. Since at least this limitation of pending claim 1 is neither described nor suggested in the prior art, claim 1 is allowable under § 103(a).

Applicant’s claims 2-8 and 41 depend from independent claim 1 and are therefore allowable for at least the reasons stated for the allowability of that claim. Applicant’s claims 9, 17, 25, 33 and all remaining claims depending therefrom contain one or more limitations substantially similar to those described herein with respect to claim 1 and are accordingly allowable for at least the same reasons. Thus, applicant respectfully requests that the pending rejections under § 103(a) be withdrawn.

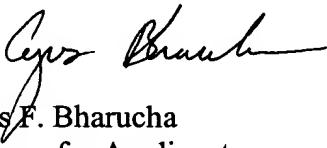
Conclusion

Applicant submits that all claims are now in condition for allowance, and an early notice to that effect is earnestly solicited. Nonetheless, should any issues remain that might be subject to resolution through a telephonic interview, the Examiner is requested to telephone the undersigned.

I hereby certify that this correspondence is being deposited with the United States Postal Service as First Class Mail in an envelope addressed to: Mail Stop AF, Commissioner for Patents, P. O. Box 1450, Alexandria, Virginia, 22313-1450, on May 2, 2005.



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May 2, 2005
Date of Signature

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